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Attorney for defendant David Reid

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

CR-05-1849 JH

vs.

DAVID REID,

Defendant.

MOTION TO SUPPRESS EVIDENCE SEIZED IN ILLEGAL
SEARCH OF DAVID REID'S HOME

Excludable delay under 18 U.S.C. §3161(h)(1)(F) will occur as a
result of this motion or of an order based thereon.

The defendant David Reid, by his counsel undersigned, pursuant to
the Fourth Amendment to the Constitution, moves this Court for an order

1 suppressing all evidence seized during the search of his home on August
2 25, 2005. The search was conducted pursuant to the warrant and affidavit
3 attached hereto as Exhibit "A". This motion is based on the accompanying
4 Memorandum of Points and Authorities.
5

6 RESPECTFULLY SUBMITTED this 2nd day of February, 2009.
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11 BY /S/ Walter Nash
12 WALTER NASH
13 Attorney for Defendant Reid
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This motion challenges the warrant on which the search of David Reid's home was based on two grounds. First, the warrant and supporting affidavit fail to establish probable cause that the search would uncover evidence of a crime. More particularly, the affidavit, at most, provides probable cause that Mr. Reid knowingly assisted Dana Jarvis and his associates in their marijuana enterprise by serving as their pilot in retrieving proceeds and otherwise carrying on business. The affidavit fails to provide probable cause that evidence of these crimes would be found in Mr. Reid's home. Second, the warrant is over broad in failing to delineate the documents to be seized. The warrant therefore fails to meet the core requirements of the Fourth Amendment and the fruits of the search must be suppressed.

II. Factual Background

On August 25, 2005, federal agents executed the challenged search warrant at Mr. Reid's home, located at 9227 West Weaver Circle, Casa Grande, Arizona. (The application and supporting affidavit are attached hereto as Exhibit "A".) The supporting affidavit, after listing the affiant-

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1 agent's experience, in essence provides:

- 2 1. As an opening summary, that David Reid "control[s]" the Weaver
3 Circle residence, that he is the pilot for the Dana Jarvis marijuana
4 organization, that Mr. Reid "has knowledge of" the organization's
5 trafficking activities, and that "evidence of [his] involvement" will be
6 found in the residence. (Exhibit "A" at 1373).
7
- 8 2. Agents have been investigating Dana Jarvis and his associates for
9 more than three years. The organization buys marijuana from
10 Mexico and moves it to several states, returning with cash. (*Id.*). The
11 opening summary also states that agents have seen David Reid fly
12 Mr. Jarvis and his associates to cities where the organization "is
13 known to deliver marijuana."¹ (*Id.* at 1374).
14
- 15 3. Mr. Reid operates "R.C. Computer & Graphics" from his home on
16 Weaver Circle. He purchased "various telephones" for that business.
17 Two of the telephones were used by Dana Jarvis for marijuana
18 business and were the subject of authorized wiretaps. (*Id.*).
19
- 20 4. In May, 2005, an individual ("CDW-1") was arrested with a load of
21 marijuana. CDW-1 admitted to having worked for Dana Jarvis for two
22
23

24 ¹Notably, the affidavit does not allege that Mr. Reid piloted any flight
25 in which marijuana was transported.

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- 1 and a half years. After becoming an informant, CDW-1 told agents
2 that David Reid “would be stupid” if he did not know that Dana Jarvis
3 was a drug trafficker. (*Id.* at 1375). The informant also said that Mr.
4 Jarvis and Mr. Reid owned an airplane together. (*Id.* at 1377).
- 5
- 6 5. In October, 2004, David Reid flew Dana Jarvis’ daughter, Ayla Jarvis,
7 to Indiana, where she (alone) was stopped in a car from which
8 \$278,210 was seized. (*Id.* at 1375-1376). Mr. Reid called the seizing
9 officer and offered to donate half the money to the police if the other
10 half was returned. (*Id.* at 1376).
- 11
- 12 6. Twice in the Spring of 2005, David Reid flew Jarvis associate George
13 Ripley to Ohio, where Mr. Ripley received money. Mr. Reid was not
14 present when Mr. Ripley received the money. (*Id.* at 1376-1377).
- 15
- 16 7. On July 3, 2005, agents intercepted a call from Mr. Jarvis to Mr. Reid
17 in which they discussed a particular individual who, Mr. Jarvis said,
18 “stole close to half of a million from Bobby . . . in product.” (*Id.* at
19 1378).
- 20
- 21 8. Russell Trujillo, a Jarvis co-conspirator, was arrested with a load of
22 marijuana. In a subsequent call to Mr. Reid on July 16, 2005, Mr.
23 Jarvis said that he was “getting rid of his telephone.” Mr. Reid told
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1 Mr. Jarvis to return the telephone to him and he would “take care of
2 it.” (*Id.* at 1378-1379).

- 3
4 9. The affiant-agent believed, based on his training and experience, that
5 there was probable cause that evidence would be found in Mr. Reid’s
6 home. The affidavit provides a laundry list of items “often” kept by
7 drug traffickers. The list includes that drug traffickers often put their
8 assets in other peoples’ or businesses’ names, keep large sums of
9 cash on hand, maintain records of drug transactions at their homes
10 and businesses, keep drugs and information concerning drug
11 associates at their homes and businesses, hide money, guns,
12 financial instruments, and valuable personal property in their homes
13 and businesses, use legitimate banks to launder drug profits, keep
14 photos or films of their drug associates at their homes and
15 businesses, keep records of their telephones and calls to other drug
16 dealers at their homes and businesses, keep records of vehicles at
17 their homes and businesses, have police scanners in their homes
18 and businesses, and keep records of their drug deals, associates and
19 assets on computers or other electronic storage devices. (*Id.* at
20 1379-1384).

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1 The application and warrant target for seizure: 1) a long list of financial
2 records without any specification as to whom the records pertain (*id.* at
3 1370); 2) correspondence or memoranda relating to “the above
4 persons/entities” (*id.* at 1371 ¶10); 3) telephone records, computers or
5 electronic devices, records of vehicles and travel records related to “Dana
6 JARVIS and his associates” (*id.* ¶¶11-13, 15); and 4) evidence of
7 occupancy. (*id.* ¶14). The application does not seek and the warrant does
8 not grant authority to search for drugs, drug proceeds or drug ledgers.
9

10
11 III. Legal Analysis

12 A. The Warrant Application Does Not Establish Probable Cause
13 that Evidence Would be Found in Mr. Reid’s Home

14 The challenged affidavit and warrant allege that Mr. Reid was “a pilot
15 for the Dana JARVIS” marijuana enterprise and that Mr. Reid “had
16 knowledge of the [enterprise’s] marijuana trafficking activities”. (*id.* at
17 1373). The affidavit does not allege that Mr. Reid possessed marijuana,
18 proceeds or records. The affidavit does not allege that Mr. Reid used his
19 home as the office for his flight business or maintained records there.
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22 The Fourth Amendment explicitly provides, “[N]o Warrants shall
23 issue, but upon probable cause, supported by Oath or affirmation, and
24 particularly describing the place to be searched, and the persons or things
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1 to be seized.” The Courts therefore require that search warrant affidavits
2 connect items to be seized with the locations to be searched, “A nexus
3 between the objects to be seized and the place to be searched for them is
4 established when the circumstances set out in the affidavit would warrant a
5 person of reasonable caution to believe that the articles sought would be
6 found at the place to be searched.” *United States v. Hargus*, 128 F.3d
7 1358, 1362 (10th Cir. 1997). *See also United States v. Danhauer*, 229 F.3d
8 1002, 1006 (10th Cir. 2000); *United States v. Reyes*, 798 F.2d 380, 382
9 (10th 1986)(affidavit must provide “a fair probability that evidence of a crime
10 will be found in the place to be searched.”).

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14 More particularly, the Tenth Circuit holds:

15 Probable cause to search a person's residence
16 does not arise based solely upon probable cause
17 that the person is guilty of a crime. Instead, there
18 must be additional evidence linking the person's
home to the suspected criminal activity.

19 *United States v. Rowland*, 145 F.3d 1194, 1203 (10th Cir. 1998). *See also*
20 *United States v. Nolan*, 199 F.3d 1180, 1183 (10th Cir. 1999)(noting that the
21 Court has “never held that the mere observation of repetitive illegal drug
22 activity outside a suspect’s residence by itself is sufficient to establish
23 probable cause for a search of the residence.”).

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1 Admittedly, the standard for judging probable cause in a search
2 warrant affidavit is not high, requiring only “probability, and not a prima
3 facie showing of criminal activity . . .” *United States v. Nolan*, 199 F.3d at
4 1182-1183, *quoting Illinois v. Gates*, 462 U.S. 213, 236 (1983). Even
5 under this standard, however, the affidavit at issue fails to establish
6 probable cause for the search. At most, the affidavit establishes that Mr.
7 Reid flew for Dana Jarvis and his associates, knowing that he was thereby
8 assisting in their marijuana business. The affidavit fails, however, to
9 connect this illegal activity to Mr. Reid’s home. *Compare United States v.*
10 *Hargus*, 128 F.3d at 1362 (probable cause for search of residence upheld
11 where affidavit established Hargus operated small business and arranged
12 illicit transaction from home); *United States v. One Hundred Forty Nine*
13 *Thousand Four Hundred Forty Two and 43/100 Dollars*, 965 F.2d 868, 874
14 (10th Cir. 1992)(“Where a suspect has no place of business separate from
15 his residence, it is reasonable for an officer to conclude that evidence may
16 be at the suspect's residence.”); *United States v. Medlin*, 498 F.2d 407,
17 410 (10th Cir. 1986)(same); *United States v. Reyes*, 798 F.2d at 382
18 (upholding search of target’s home based on evidence that target received
19 large quantities of drugs, provided financial backing for drug deals, and that
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1 members of conspiracy maintained records of associates).

2 In *United States v. Rowland*, 145 F.3d at 1199, agents obtained an
3 anticipatory warrant to search Rowland's home for an illicit tape. Agents
4 saw Rowland pick up the tape, go to his workplace, and then go home.
5 Agents then executed the warrant and found the tape. *Id.* Rowland
6 challenged the search, arguing that the warrant affidavit failed to provide
7 probable cause that he would watch the illicit tape at his home. *Id.* at 1203.
8 The Court of Appeals agreed, noting that the affidavit failed to provide any
9 evidence that Rowland had previously taken contraband to his home
10 versus "otherwise unlimited possible sites . . ." *Id.* at 1204-1205.

11 The same conclusion is required here. The affidavit does not allege
12 that Mr. Reid ran his flight service or maintained records at his home. The
13 only connection to the home made by the affidavit is that Mr. Reid used the
14 address for "R.C. Computer and Graphics", a business the affidavit fails to
15 otherwise describe, and purchased two telephones that were, at some
16 point, in Dana Jarvis' possession. (Exhibit "A" at 1374). This meager
17 reference to the residence falls short of providing probable cause that
18 evidence of Mr. Reid's involvement in a marijuana conspiracy would be
19 found in his home. Suppression is therefore required.

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1 B. The Warrant is Overbroad

2 The challenged warrant calls for the seizure of a broad array of
3 financial records without limitation as to ownership. (Exhibit "A" at 1370).
4 The warrant also calls for the seizure of correspondence, memoranda and
5 records related to "Dana Jarvis and his associates" without identifying the
6 "associates". (*Id.* at 1371). The warrant failed to provide guidance to the
7 agents in determining what should be seized and thereby "authorized the
8 seizure of 'virtually every document that one might expect to find in a ...
9 company's office,' including those with no connection to the criminal activity
10 providing the probable cause for the search." *Davis v. Gracey*, 111 F.3d
11 1472, 1479 (10th Cir. 1997), *quoting United States v. Leary*, 846 F.2d 592,
12 602 (10th Cir. 1988).
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16 The search was conducted pursuant to a general warrant in violation
17 of the Fourth Amendment. *Marron v. United States*, 275 U.S. 192, 196
18 (1927). Suppression is therefore required.
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20 IV. Conclusion

21 For the reasons set forth above, it is respectfully submitted that the
22 search of David Reid's home violated the Fourth Amendment to the
23 Constitution. All evidence seized in the search must therefore be
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1 suppressed.

2 RESPECTFULLY SUBMITTED this 2nd day of February, 2009.

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8 BY /S/ Walter Nash
9 WALTER NASH
10 Attorney for Defendant Reid

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was delivered to opposing counsel and all other counsel of record *via* the CM/ECF system this 2nd day of February, 2009.

/s/ Walter Nash
Walter Nash

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